



Generally Speaking

Comings and Goings

Ruth Botstein joined the Torts/Workers' Compensation section in early March to fill the position vacated when Eric Aarseth was appointed to the superior court bench in Anchorage. Ruth is a graduate of Stanford Law School and comes to the department from the Alaska Public Defender Agency.

Dana Burke also started with the Torts section to fill the position that will be vacated later this spring when Dave Knapp retires. Dana is a graduate of the University of Miami School of Law and comes to the department from the private firm of Wilkerson, Hozubin & Burke.

Howard Ensor left the department's Administrative Services Division, Procurement and Supply section on March 31, 2006, to go fishing and travel.

Jaye Johnson transferred from the travel desk to the contracts desk in the Fiscal section of Administrative Services.

Stephanie Jordan joined the Juneau, Administrative Services Division, in the mail and supply position. Stephanie most recently worked in retail.

Maureen Koezuna has been promoted to the new paralegal position in Nome. Mo has been a law office assistant in the Nome office for many years; her promotion is well-deserved and great news for her family and the office.

Drew McDougal was promoted to IT manager effective in late March.

Nancy Miller is the department's new travel desk accounting technician and began working the desk on February 13, 2006. She came to the department from Public Safety. She is a welcome addition and brings a strong knowledge of fiscal operations and the state's accounting practices.

Kevin Ridges was promoted from the position of mail services courier in the Juneau Administrative Services Division to the position of law office assistant I in the Civil Division as of March 22nd. Kevin is splitting duties between the Oil, Gas, and Mining section and the Human Services section.

Keeley Rohrbach's last day with the Attorney General's Office was March 17, 2006. Keeley accepted the position of program assistant with the U.S. Department of Veteran's Affairs, Healthcare System Division.

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Kira Westra's last day with the Attorney General's Office was March 31, 2006. Kira accepted a position with the U.S. Department of Homeland Security.

Mark Wiggins transferred from Anchorage to Juneau within the IT section.

On March 6, 2006, **Joan Wilkerson** joined the Juneau-L&SA section as an attorney for retirement and benefits. Joan was previously the personnel director for the City and Borough of Juneau.

CIVIL DIVISION

Child Protection

CINA cases. The section received many new CINA cases of note since the February 2006 monthly report, based upon allegations in OCS petitions.

Unfortunately, several children had to be removed from their homes due to sexual abuse. In a few of the cases, the mother knew of the abuse but failed to protect the children. In one such case, OCS learned, during the course of an investigation, that over the last two years two men had been allowed to come into the family home and molest a five-year-old child. The mother and her sister, who lived together, were aware of the abuse, but refused to have the child interviewed because they knew that if anyone found out, their children would be taken away. The home was also below community standards. OCS took custody of the children of both mothers as a result of the mother's failure to protect their children.

In another case an adult woman reported that her father had been sexually molesting her for the past year and that her mother was aware of the molestation. When OCS investigated, another girl in the home also reported she had been sexually abused. The mother failed to protect the younger

children in the home, resulting in their removal by OCS.

Five children were taken into custody after it was disclosed that two children were sexually abused by their mother's boyfriend and the mother was not protective.

OCS investigated school personnel's concerns about severe lack of hygiene, malnutrition and excessive absences of some children. During the interview of the children, one of them disclosed sexual abuse by her parents, a family friend, and her siblings.

In other cases, parents are not willing to provide proper medical/psychological treatment for their children. OCS took custody of a 13-year-old that had been exposed to ongoing drug abuse, neglect and domestic violence. The child had self-inflicted cuts on her arms and was upset about her mother's use of drugs. Although the mother cooperated in OCS efforts to get the child into treatment, the mother failed to be involved in the treatment. The mother insisted the child be removed from the hospital against medical advice, at which point OCS took custody of the child to ensure that she continue to receive treatment.

A 15-year-old child was taken to the hospital due to withdrawals from methadone and heroin. She reported that there had been substantial drug use in the home of her mother, including drug overdoses and one in which a person had died. The father initially refused to allow his daughter to get treatment, resulting in OCS taking custody. However, ultimately the father did agree with the recommendations of treatment personnel, and custody was returned to the father.

OCS received a report of harm that a child tried to commit suicide twice but the parents failed to address his mental health problems. OCS worked with the parents to get the child into treatment, but once in treatment, the mother failed to follow treatment advice, resulting in OCS taking custody of the child to ensure his safety.

Alcohol abuse by parents this month, as always, was the source of child abuse and neglect for many children. Anchorage police officers responded to a residence due to a 911 hang up call. Officers found parents who were intoxicated and a seven-month-old child lying on the bed without a blanket. The child was pale and shivering. The mother had a BAC of .258 and the father had a BAC of .189. A 14-year-old child was also found in the home. He was visibly intoxicated and he ran from the premises. Both children were taken into custody.

In another instance, Anchorage police responded to a call at 7:30 AM and found a three-year-old child by the front door trying to get into the home. Officers found that all of the adults in the home were intoxicated, most to the point of being passed out. There was broken glass on the living room floor. None of the adults were aware the child had gotten outside of the home. All of the children in the home were taken into custody because there was no sober caregiver available.

Police officers found a two-year-old child in the care of two highly intoxicated parents. The home was unsanitary—feces were found throughout the house. The social worker was unable to find any clean clothing or a clean bottle. The child had an untreated rash all over his body. Both parents were charged with child endangerment.

OCS took custody of a six-year-old child after repeated instances of her father purporting to care for her when he was intoxicated to the point of passing out. The child disclosed that her father drinks a lot and it makes her sad. The father acknowledged drinking to the point of passing out at least once per week.

OCS investigated a situation in a remote village in which both parents were too intoxicated to care for three children under age five. OCS did not take custody because the parents indicated they would cooperate with tribal efforts to get them in substance abuse treatment. However, within a week there were two additional reports that both

parents were intoxicated and on the second occasion the children were exposed to domestic violence between the parents. OCS did take custody after this event.

Miscellaneous

In a well-publicized case, the parents of five adopted children pled guilty to felony offenses as a result of their abuse of the children. The parents have agreed to voluntarily relinquish parental rights to four of the children. AAG Susan Wibker is handling this case.

AAG Darin Goff handled an adjudication trial in which he obtained findings by clear and convincing evidence that a mother was neglecting her child by allowing her boyfriend to physically abuse the child, by emotionally abusing another child, by taking minimal steps to engage in a case plan to reunite her with her children, and by failing to visit the children.

AAG Alicia Porter is handling a case in which she has sought an accounting of guardians who may have wasted a substantial amount of the children's assets.

AAG Jennifer Joanis obtained a long-term protective order for six children whose father's parental rights had been terminated. After the children learned their father had been released from jail after convictions for violence where his children had either been victims or witnesses, the children began to regress, including urinating on the walls and hoarding food. The court believed a long-term protective order was warranted to keep the father from the children.

Commercial and Fair Business

Consumer Protection/Anti-Trust

Consumer Education. AAG Cynthia Drinkwater gave a presentation on "Scams: How to Recognize Them and Where to Report Them" at

a conference at the Anchorage Senior Center on March 10.

ABA Antitrust Spring Meeting in D.C. AAG Ed Sniffen attended the 54th Annual Antitrust Law Spring Meeting in D.C., hosted by the Antitrust Section of the ABA. There were over 2,200 attendees, representing over 35 international jurisdictions. A focus of this year's meeting was the emerging development of antitrust regimes in developing countries, including China and other European Union communities. There were over 55 seminars available for attendees, including workshops for state antitrust enforcers.

Ed reports that one of the most interesting presentations was a mock trial on an antitrust case. A jury was selected from the D.C. jury pool that had no knowledge they would be sitting on a mock jury. After the case was presented, the audience was able to observe and listen to the jury deliberate. This was an invaluable experience that gave unique insight into how regular jurors react to evidence and expert testimony. See Ed if you want more information, or any of the materials from the meeting.

State files suit against Lilly for illegal marketing of the drug Zyprexa. The state filed a complaint in state court against Lilly, the maker of Zyprexa, an antipsychotic drug used to treat various bipolar disorders, including schizophrenia. The complaint alleges that Lilly knew of potentially harmful side effects of the drug, like diabetes and hyperglycemia, but failed to disclose the information. The state is asking for recovery of money spent by the state's Medicaid agency to reimburse for Zyprexa prescriptions, and for penalties.

Division of Corporations, Business and Professional Licensing –

Decisions

Donadio v. State – Anchorage Superior Court Judge Patrick McKay issued a decision in an

administrative appeal of a license denial by the Board of Professional Counselors. The court remanded the matter to the board for additional consideration. In this case, Ms. Bobbi Donadio appealed the board's decision to deny her a professional counselor's license.

To obtain such a license, an applicant must have a master's degree in counseling or a related field, including psychology, marital and family therapy, social work, and applied behavioral science. Ms. Donadio has a Master of Arts in education. After reviewing Ms. Donadio's application and her education degree courses, the board determined that she did not meet the statutory education requirements and denied her a license.

Donadio requested a hearing and ALJ David Stebing affirmed the denial. The board adopted the ALJ's decision, which stated, in part, that Donadio's degree "is not in counseling, a related field, or a related professional field under [statute and regulation]" and that the board's discretion under the statute did not allow for making an exception to the education requirement for Ms. Donadio's degree.

On appeal, Donadio primarily argued that the board erred when it ruled (by adopting ALJ Stebing's proposed decision) it did not have discretion to grant a license to her based on her education degree. While rejecting a couple of Ms. Donadio's secondary arguments, Judge McKay remanded the matter to the board for clarification that the board understood it had discretion to award a license to Ms. Donadio. According to Judge McKay, he could not determine from the record whether the ALJ and the board correctly understood that the board had discretion to award a counselor's license to an applicant who does not have a degree in counseling, but has a degree that is, in the board's view, related to counseling. The court stated, "[b]ecause the law grants the board discretion, it is clearly within its powers to grant exceptions where appropriate." AAG David Brower handled this case on behalf of the Division of Corporations, Business and Professional Licensing.

In re Pyle. An administrative law judge issued a proposed decision this month following an administrative hearing in a Board of Nursing case. The applicant had applied for certification as a nurse aide (CNA) in Alaska. She failed to disclose that she had been convicted of three counts of sale of cocaine to an undercover police informant.

The existence of these convictions was discovered after a criminal history records check based on fingerprints. When confronted by her response to the application questions, she said that she thought she could deny the existence of the convictions because she had received SISs for those crimes (and mistakenly thought the convictions had since been set aside).

At the hearing, the applicant's former parole officer testified that, based on what she characterized as a long standing Department of Corrections policy, she had told the applicant that it was okay to deny the existence of the three class C felony drug convictions. The ALJ's proposed decision recommends that the CNA application be granted by the board. AAG Gayle Horetski handled the case on behalf of the Division of Corporations, Business and Professional Licensing.

Division of Insurance

Progressive Halcyon et al. v. DOI. AAG Nick Atwood advised and represented the Division of Insurance in action brought by Progressive Halcyon et al. in Anchorage Superior Court. In this action, the plaintiffs sought an injunction to require the division to quit asking questions about a rate filing and to summarily approve the filing based on a decision by Judge Wolverton in another case. The plaintiffs asked for a preliminary injunction on an expedited basis.

After briefing and oral argument, Judge Michalski agreed with the division that the burden for receiving injunctive relief was not met. Judge Michalski agreed with the division on every point raised. He found that Judge Wolverton's decision

did not control that plaintiffs failed to show that any harm they might suffer was not of their own making, and that they failed to adequately address the potential burden on the division or Alaskan consumers if injunctive relief were granted. Based on that ruling, plaintiffs subsequently dismissed the underlying complaint with prejudice. The division's motion for attorney's fees is pending.

DOI v. Arelia Gomez and Alaskan Bail Bonds.

AAG Nick Atwood, on behalf of the Division of Insurance staff, was able to negotiate and complete a settlement of a pending administrative proceeding involving licensee Arelia Gomez. The division's accusation asserted that Ms. Gomez as owner and compliance officer of Alaskan Bail Bonds (AKBB) violated various provisions of the insurance code – some of the claims were derivative of a criminal conviction of one of Ms. Gomez's former employees, John Elder, for his own violations of Alaska's insurance laws. The accusation also alleged that Ms. Gomez and AKBB altered appearance bonds and sold them or issued them as performance bonds, in violation of several provisions of the insurance code.

To settle the accusation, Ms. Gomez agreed to a five year suspension of her insurance license, a five month suspension of the AKBB firm license and a penalty of \$7,500. Director Linda S. Hall signed the order approving the settlement and the administrative proceeding has been dismissed.

Environmental

The D.C. Circuit Court of Appeals issued its decision in the NSR2 case, *New York v. EPA.*

The court vacated EPA's 2003 Equipment Replacement Provision (ERP) (the so-called 20% rule). Under the ERP, replacement of components with identical or functionally equivalent components that do not exceed 20% of the replacement value of the process unit and does not change its basic design parameters is not a change triggering the New Source Review (or NSR) permitting requirement, i.e. it would fall

within the Routine Maintenance, Repair, and Replacement Exclusion.

The court held that the ERP was contrary to the definition of “modification” under section 111(a)(4) of the Clean Air Act which includes *any physical change in . . . a stationary source which increases the amount of any air pollutant emitted . . .*. The word “any” in “*any physical change*” is not ambiguous and really means any. Alaska was among the state interveners supporting EPA.

Dutch Harbor. DEC entered an amended Compliance Order by Consent with American President Lines to resolve continuing air violations at APL Dutch Harbor container terminal. Under the COBC APL will come into compliance with its owner requested permit avoidance emission limits by April 30, 2006 or install certain additional pollution controls. In addition to paying DEC and DOL costs, APL agreed to an increase in civil penalties to \$270,000 with \$60,000 suspended on the condition of abiding by the terms of the amended COBC.

Massachusetts et al. petition for writ of certiorari in the greenhouse gas (GHG) case
Commonwealth of Massachusetts v. EPA. The D.C. Circuit upheld EPA’s decision not to regulate CO₂ and GHG emissions from automobiles. At issue is whether EPA has statutory authority to regulate air pollutants associated with climate change. Massachusetts et al. have filed a petition for a writ of certiorari which the EPA opposes. Alaska is among the state interveners supporting EPA.

Seabulk Pride Tanker Grounding at Nikiski. AAG Breck Tostevin assisted DEC during the emergency response to the February 2 grounding of the oil tanker Seabulk Pride near the Nikiski Kenai Pipeline dock in Cook Inlet. Tostevin prepared administrative subpoenas for DEC which were served upon Tesoro, the C plan holder, and Seabulk Tankers, Inc., the vessel owner. After the vessel was successfully re-floated, DEC has continued to investigate the incident. Tostevin is

reviewing the initial responses to the administrative subpoenas and the spill reports to DEC.

GC-2 Crude Oil Transit Line Spill. AAG Breck Tostevin and Chief AAG Steve Mulder have assisted the emergency response and investigation of the large crude oil spill from BP’s GC-2 transit pipeline at Prudhoe Bay. Tostevin drafted a DEC administrative subpoena to BP to preserve and produce documents concerning the spill and inspection, monitoring and maintenance concerning the line. Tostevin and Mulder have also advised DEC and the attorney general concerning the incident and the order issued by the federal Office of Pipeline Safety in the aftermath of the spill.

Wrangell Institute Cleanup. DOJ forwarded its long-awaited settlement offer to DEC, Cook Inlet Region, Inc., and the City of Wrangell to cover the U.S.’ portion of cleanup costs related to BIA’s contamination of the former BIA facility in Wrangell. The property is now owned by the City of Wrangell which has expended funds removing buildings and underground storage tanks from the property. The parties are working toward a federal court consent decree that will provide funding for a cleanup of the property and recovery of the state’s cleanup costs. The federal offer is premised on federal legislation authored by then-Senator Frank Murkowski, indemnifying CIRI for contamination on the site left by BIA.

[Human Services](#)

Litigation

Paul Fuhs/Alaskan’s for Medical Choice and Competition lawsuit. Chief AAG Stacie Kraly prevailed on the final count in this suit against former DHSS Commissioner Joel Gilbertson related to the Certificate of Need Program. Judge Gleason granted the state’s motion to dismiss the administrative appeal count of his complaint, which fully disposed of the entire lawsuit. A request for entry of final judgment was filed, so the state will be able to file a motion for costs and fees.

Emily Snyder v DHSS. This is a class action suit filed by the Northern Justice Project related to denial notices for TEFRA eligibility (Medicaid coverage). The notice was defective so the state has fixed that for future purposes and is working on explaining to plaintiff's counsel class issues.

E.H. v. DHSS/Infant Learning Program and Fairbanks North Star Borough School District.

This matter is in federal district court and is a complaint based upon part B and part C of the Individuals with Disability Education Act. This matter was litigated at the administrative level. About 15 months ago the plaintiffs joined the ILP program in the underlying administrative hearing and Chief AAG Stacie Kraly successfully argued a motion to dismiss on jurisdictional grounds. That decision was rendered in November 2004. In January the remainder of the case was disposed of in the school districts favor and the plaintiffs have appealed. The section will be filing a motion to dismiss on improper service and an untimely argument in light of the 15 months between the decision and the appeal.

Disability Law Center moves for API Tapes. The Disability Law Center filed an ex parte motion for a TRO to get surveillance tapes from API. The federal district court denied the motion but set the matter on for a hearing on Wednesday, March 29. The DLC requested the tapes as the Protection and Advocacy group for the state. They filed the motion in court because they were afraid that the tapes would be altered if they requested them outright.

Certificate of Need matters. There are two CON matters this month. The first is an appeal by Providence related to a denial of a CON for an ambulatory surgical suite. The second is a complaint of declaratory and injunctive relief from Fairbanks Memorial Hospital related to a decision of the commissioner that a provider in Fairbanks did not need a CON.

Subrogation/Liens

Medicaid lien and subrogation activity arising from underlying tort claims brought by Medicaid recipient plaintiffs has remained active through the month of March 2006. At this time there is an inventory of 480 open matters and 247 resolved and closed matters.

During the month of March the section collected \$157,546.82 as the result of resolving the state's interest in 16 matters. The state's collection amount for March of this year is substantially greater than the amount collected in March 2005, when the total was \$79,676.26. During calendar year 2005, the monthly collection amounts averaged \$85,214. For the first three months of 2006, the monthly collection amounts average \$232,732.

Mediation continues to be used to facilitate resolution of Medicaid lien and subrogation matters where appropriate. In addition to resolving lien and subrogation matters in tort situations, the section has also been asked by DHSS to provide guidance and assistance in the pursuit of financial recovery in connection with criminal restitution matters and in the context of trust and estate recovery where Medicaid recipients have utilized estate planning to qualify or maintain eligibility for public assistance. DHSS has requested funding for another attorney to help offset this work load increase in HB 426.

Licensing

The section continues to give advice on the implementation of SB 125, which has been intense and will continue to be so as all agencies transition to the new licensing scheme under one administrative division in DHSS.

Labor and State Affairs

Alaska Public Offices Commission (campaign finance)

Alaska Right to Life Committee v. Miles. On March 23, a panel of the Ninth Circuit Court of Appeals unanimously affirmed the decision of federal district court Judge Beistline upholding the constitutionality of certain Alaska campaign finance laws regulating so-called “soft money” against a First Amendment challenge. AS 15.13.030, et seq.

The challenger was Alaska Right to Life Committee (“AKRTL”), which as an advocacy nonprofit association that must report as a “nongroup entity” under Alaska’s campaign finance laws. AKRTL objected to reporting requirements associated with media announcements whose message reasonably could be understood to advocate for the election or defeat of named candidates: the requirements to (1) register with the Alaska Public Offices Commission (APOC); (2) report contributions and expenditures; (3) notify contributors that contributions may be used to influence an election; and (4) disclose on the announcement that it paid for the communication. It contended that these provisions violated the First Amendment, both facially and as applied.

Focusing on the definition of “electioneering communications,” the court held: “We have little trouble concluding that the definition of ‘electioneering communication’ contained in § 15.13.400(15) is not unconstitutionally vague, either facially or as applied.” The panel relied on the U.S. Supreme Court decision in *McConnell v. FEC*, in which the U.S. Supreme Court upheld the constitutionality of a similar federal definition of “electioneering communication” enacted in the Bipartisan Campaign Reform Act of 2002. Applying a strict scrutiny analysis without deciding whether it was required, the court found that any burdens on the First Amendment were insignificant and the state’s interests compelling. “[A]s stated . . . succinctly by the Court in *McConnell*, those interests are ‘providing the electorate with

information, deterring actual corruption and avoiding any appearance thereof, and gathering the data necessary to enforce more substantive electioneering restrictions.’” AAG Mike Mitchell represented APOC’s executive director and commissioners.

Department of Administration (bid protest).

Aetna filed a protest on March 10 to stay the state’s award to Premera Blue Cross of the contract to provide medical and pharmaceutical claim management services for the state’s employee health benefits program. The stay was denied effectively when the state entered into a contract with Premera Blue Cross on March 13. The department’s written denial of the stay and protest was issued on March 21. The state was represented by AAG Margie Vandor.

State v. Bachner and Bowers. Following his previous ruling that Bachner and Bowers satisfied the criteria for public interest litigant status (notwithstanding the fact that the claim concerned a lucrative 40-year lease), the superior court (Judge Winston Burbank, pro tempore) awarded full attorneys’ fees of \$96,000 against the state. Unless the state secures interim review, any appeal from the award must await the decision on remand to the Office of Administrative Hearings for consideration of a remedy to Bachner and Bowers in addition to the award of bid preparation costs previously awarded. AAG Margie Vandor represents the state in this case.

Employment

Alaska v. Confidential Employees’ Association.

The Alaska Labor Relations Agency issued orders that it was rejecting the state’s arguments that its labor negotiators and senior personnel staff should be excluded from collective bargaining and union representation under the Public Employment Relations Act. The Agency did not provide its reasoning, but stated that a full decision would follow. Chief AAG Jan Hart DeYoung handled the case on behalf of the state.

Parson v. State, Alaska Housing Finance Corp.

On March 20, approximately two weeks before trial, AAG Richard Postma received a decision from Superior Court Judge Sharon Gleason granting the state summary judgment in this wrongful termination action by a former employee of the Alaska Housing Finance Corporation. The court dismissed Mr. Parson's contract claims for failure to exhaust his collective bargaining grievance procedures, dismissed his punitive damages claims as contrary to AS 09.50.280, and converted his human rights claim to an appeal from the decision of the Alaska State Commission for Human Rights, which previously concluded that Mr. Parson's human rights claim was unsupported by substantial evidence.

Motor Vehicles

The superior court affirmed the Division of Motor Vehicle's revocation of the drivers' licenses of Mr. Stiefel (Judge Eric Aarseth) and Mr. Morris (Judge Hal Brown). Both cases were handled by AAG Sarah Felix.

Retirement and Benefits

Public Employees' Retirement System v. Gallant.

On March 15, 2006, AAG Neil Slotnick argued this appeal before the Alaska Supreme Court. The appeal concerns the constitutionality of the law that grants a ten percent cost-of-living increase in retirement benefits to retirees who remain in Alaska after retirement.

In the Matter of Levy. On March 15, 2006, Administrative Law Judge Dale Whitney granted the state's motion for summary judgment in a claim concerning the calculation of the monthly retirement benefit for part-time employees. The ALJ rejected the claimant's argument that the work should be annualized when the benefit is computed. The two theories advanced would have resulted in a higher average monthly compensation and, thus, higher monthly retirement benefits than the method used by the Division of Retirement and Benefits. Without endorsing the division's method, the ALJ concluded that the

claimant's theories were unsupported by the statutory language or in the legislative history. AAG Toby Steinberger represented the state in this matter.

Special thanks. To everyone responsible for a terrific civil retreat. And congratulations to Gina Ragle and Terri Begley-Allen for well-deserved recognition for their hard work and accomplishments. Gina received the award for outstanding service and Terri received the legal assistant award.

Legislation & Regulations

During March 2006, the Legislation and Regulations section spent an active month editing draft legislation and bill amendments for the 2006 legislative session. The section assigned legislation to assistant attorneys general for review. The section edited bill reviews for the 2006 legislative session.

The section also performed legal reviews of several regulations projects including (1) Board of Game (permits to take foxes and methods of taking game); (2) State Board of Education and Early Development (making emergency regulation permanent regarding teacher certifications); (3) Board of Fisheries (Aleutian Islands district Pacific cod fishery management plan; Southeastern Alaska area commercial herring fisheries; Prince William Sound salmon fisheries); (4) Regulatory Commission of Alaska (transfer of functions from public advocacy section to the attorney general); (5) Board of Examiners in Optometry (pharmaceutical agent prescription and use endorsement); (6) Department of Health and Social Services (Medicaid reimbursement for personal care assistance services); (7) Alaska Workers' Compensation Appeals Commission (making emergency regulations permanent regarding procedures).

Natural Resources

Board of Fisheries Meeting. Senior AAG Lance Nelson participated in the Board of Fisheries

meeting in Anchorage from March 17–23, giving advice on a number of legal issues on proposals for statewide Dungeness crab and miscellaneous shellfish (shrimp, scallops, etc.) issues, as well as a range of supplemental issues such as closed water boundaries in Cook Inlet and sport fishing charter boat restrictions.

Joint Boards of Fisheries and Game Meeting.

On March 21, AAGs Lance Nelson and Steven Daugherty participated in a joint meeting of the Board of Fisheries and Board of Game called to consider a proposal on membership qualifications for fish and game advisory committees. The joint boards received a letter from nine state senators stating that they believed the joint boards did not have the statutory authority to adopt the proposal. The boards decided to table the proposal until its next joint meeting, which will probably be held about September 2007.

Spring Board of Game Meeting. From March 10–18, AAG Kevin Saxby attended the spring Board of Game meeting in Fairbanks. Issues before the board included seasons, bag limits, and means and methods of taking game for all of Interior Alaska, as well as subsistence allocations, predator control, and other controversial topics.

Probably the most heartrending decision the board had to make was to completely close all moose hunting, including subsistence hunting, in a large part of Game Management Unit 19A, along the Kuskokwim River in western Alaska, because the populations have become so severely depleted that sustained yields were threatened.

This is an area where predator control was recently initiated, but, due to litigation and policy concerns of the previous administration, action was delayed so long that a moose herd that previously provided for annual harvests of 750 to 950 animals currently has, at best, a harvestable surplus of only 56.

Local representatives from Sleetmute and other villages asked the board to close all subsistence

hunting in their area, for the long-term health of the resource and preservation of local lifestyles. All concerned hope that predator control will reverse the decline and allow, at least, subsistence uses to resume soon.

The Board postponed readopting the predator control plans for this area, and four other similar areas in the state, until May to give staff more time to compile information addressing various issues raised by the public about these controversial programs. Nevertheless, dozens of pages of new regulations were adopted at the meeting.

Board of Agriculture and Conservation Meeting.

AAG Sabrina Fernandez attended the March Board of Agriculture and Conservation meeting and assisted with Mount McKinley Meat & Sausage sale preparation. At the meeting, the BAC approved the draft request for proposals and draft facility use contract for release and publication.

State Waters Aleutian Islands Pacific Cod Fishery Opened.

The Alaska Board of Fisheries, at its meeting in Ketchikan in late February, adopted emergency and regular regulations providing for a State Waters Aleutian Islands Area Pacific Cod Fishery. AAG Steven Daugherty attended the meeting and helped the board develop regulatory language and a finding of emergency. Upon returning from the meeting AAG Daugherty assisted the Department of Fish and Game with implementation issues and with noticing the emergency regulation and making it permanent. The State Waters Pacific Cod Fishery opened on March 15.

May v. CFEC (Southern Southeastern sablefish longline fishery) and May v. CFEC (Southern Southeastern sablefish pot fishery). On March 17, 2006, AAG Stan Fields had oral argument in these Rule 601 appeals of Commercial Fisheries Entry Commission decisions denying appellant's applications for entry permits for the Southern Southeast Inside sablefish longline fishery and the Southern Southeastern sablefish pot fishery.

Copeland v. CFEC. On March 6, 2006, the superior court issued a decision affirming the CFEC's decision on all issues in this appeal of the CFEC decision denying appellant's application for an entry permit for the Prince William Sound salmon purse seine fishery. AAG Stan Fields represented the state in this matter.

May v. CFEC (Southeastern roe herring purse seine fishery). In another CFEC appeal, on March 2, 2006, the superior court issued an 88 page decision affirming the CFEC's decision on all issues. This case involved CFEC's denial of an entry permit application for the roe herring purse seine fishery. The court upheld the commission's decision denying participation points for harvests in the Annette Island Indian Reservation because reservation waters were not included in the regulation affording participation point awards. The court also agreed: that the commission cannot be collaterally estopped from overruling previous decisions; *stare decisis* is less rigorously applied to administrative agencies and it did not preclude the commission from overruling a previous holding in another case; and that the applicant's equal protection, due process, unjust discrimination, uniform application, eligibility to apply and past participation point claims failed. AAG Stan Fields represents the state in this matter.

Oil, Gas and Mining

Oil and Gas Property Tax Appeals. During March and April the O&G section assisted the DOR Tax Division in hearing and deciding 17 informal conference property tax appeals. The appeals were taken from the 2006 property tax assessments of TAPS, the Valdez Terminal, North Slope facilities, and other oil and gas property throughout the state.

Opinions, Appeals and Ethics

Ethics

For ethics matters, most of the work the section does and advice that is given is confidential by law. However, former Department of Health and Social Services Commissioner Joel Gilbertson waived confidentiality regarding an ethics complaint that Dr. Robert Bridges filed against him. After reviewing Mr. Gilbertson's response to the complaint, the complaint was dismissed because there was not probable cause to believe Mr. Gilbertson violated the Ethics Act.

We can also report—because the settlement stipulation provides that it is public—that we settled an ethics complaint against a former state official. The former official admitted violating the Ethics Act by using state phones to place personal long-distance and other calls that either caused the state to incur charges or relieved him of paying the usual charges. He also admitted taking official action affecting a matter in which he had a personal or financial interest. Under the settlement, the former official paid the charges for his personal calls, an equal amount as a penalty, and an additional penalty of \$500, for a total of nearly \$1,500.

In addition to work on other confidential ethics matters during March, the section continued to monitor bills proposing changes to the Ethics Act.

Appeals

R.W. v. State. AAG Megan Webb filed an appellee's brief on behalf of DHSS, OCS in *R.W. v. State*. R.W. appealed the trial court's order terminating her parental rights to her daughter. The issue on appeal was whether OCS timely identified and made referrals for family support services designed to reunify the family.

Zimmerli v. Administrator, PERS. AAG Webb also filed an appellee's brief in *Zimmerli v. Administrator, PERS*, in the superior court. This

administrative appeal arises out of a decision by the Public Employees' Retirement Board, denying a park ranger's request to be qualified for "peace officer/firefighter" retirement benefits rather than "all other" category benefits for which the vast majority of public employees qualify. The state's position is that park rangers do fall within the statutory definition of who qualifies for "peace officer/firefighter" benefits, so the board's decision should be upheld.

PA v. State. AAG Mary Lundquist submitted the state's brief in *PA v. State*, a Child in Need of Aid appeal. OCS became involved after having been contacted by the police who were arresting the mother for child neglect. The mother had driven her poorly clad children to the hospital in the middle of the night to visit her hospitalized husband. The husband and father was a quadriplegic who had been in the hospital for several years following a serious snow machine accident.

The mother, who was extremely intoxicated, created a ruckus in her husband's hospital room, became belligerent and confrontational with hospital staff, and then threw up and passed out in lobby with her two young children watching. The trial court issued a decision that the children were in need of aid in September, 2005, based on the mother's conduct.

At the disposition hearing a month later, the department moved for release of state custody and supervision based on a positive home visit with the father and evidence that the mother was in a safe situation. The trial court released supervision and dismissed the case. The father appealed from the determination that his children were in need of aid, arguing that the finding that his children were in need of aid was based solely on the mother's conduct, and this violated his substantive due process right to parent.

The state argued that its parens patriae interest to preserve and promote the welfare of the children and the children's interest in an adequate safe home provided a compelling countervailing

interest and therefore the finding of CINA did not violate the father's substantive due process rights.

G.M. v. State, OCS. AAG Mike Hotchkin finished briefing in the child protection case *G.M. v. State, OCS*. The trial court terminated an Indian mother's parental rights to her child based on her continuing substance abuse problems and untreated mental health issues. The mother did not appeal, but the child's grandfather, from whose care the child was actually removed, appealed the termination, claiming Indian custodian status under the Indian Child Welfare Act ("ICWA").

The mother reportedly left the child in the grandfather's care during her periods of substance abuse. During one such period the grandfather was arrested on felony charges and the child was taken into state custody. Ultimately, the grandfather was sentenced to more than 20 years, the mother's parental rights were terminated, and the child was adopted by a family that was approved by the state, the child's tribe and the child's guardian ad litem. The grandfather, without objection, was allowed to participate from prison in the termination proceedings as the child's Indian custodian, and although the mother did not appeal the termination of her parental rights the grandfather did.

Issues on appeal include whether the grandfather's participation in the termination proceedings as an Indian custodian was proper, whether he has standing to appeal termination of the mother's parental rights, whether the trial court applied an unconstitutional standard of proof as to one element in terminating the mother's parental rights, whether the state made adequate efforts to preserve the family, and whether expert testimony regarding tribal cultural childrearing practices must be presented in every ICWA termination proceeding. Oral argument will be held in early May.

Regulatory Affairs & Public Advocacy (RAPA)

New Cases

U-06-06, Municipal Light & Power (ML&P).

As required by the stipulated settlement in U-99-139(17), ML&P has filed a depreciation study proposing a reduction of its depreciation expense by approximately four percent. This is ML&P's first depreciation study in the history of the Anchorage utility. RAPA filed the Attorney General's Notice of Election to Participate in the case on February 28, 2006. RAPA will analyze whether the utility's underlying methodology is sound and consistent with generally accepted ratemaking principles, particularly as it relates to plant accounting and rate-base valuation. A procedural schedule has not yet been set.

U-06-20, AK Pacific Environmental Services

(APES). APES is a refuse utility that has filed cost of service studies for its four regulated subsidiaries in Juneau, Ketchikan, Dutch Harbor, and Nome. The utility has also filed a rate design study for the Juneau subsidiary with some proposed new rates. The filings are based upon previously approved revenue requirements to which RAPA stipulated. On behalf of the attorney general, RAPA filed a Notice of Election to Participate in the case on March 17, 2006.

RAPA will now evaluate the filings to ensure that the utility's approved costs are properly allocated between customer classes and that the final rate design results in reasonable rates based upon costs to provide the service. Because of the timing of RAPA's other RCA docket commitments, RAPA has petitioned the commission to reschedule the prospective hearing from October to November, 2006.

Approved Stipulated Settlements

U-05-12, Inside Passage Electric Cooperative

(IPEC). By Order No.14 dated March 1, 2006, the commission accepted a stipulated settlement

between the utility and RAPA that resolved all disputed revenue requirement issues. The utility agreed to file a cost of service study within nine months of approval of the stipulation and to file a depreciation study in 2008.

U-03-11, Bethel Utilities Corp. By Order No.15 dated March 15, 2006, the commission accepted a stipulated settlement between the utility and RAPA establishing a new rate design that included a wholesale power service rate for the villages of Napakiak and Oscarville.

RAPA Intervention Summary Update

As of March 17, 2006, RAPA is involved in twenty dockets before the RCA. That number includes eighteen adjudicatory matters in which the attorney general/public advocate has elected to participate as a party and two rulemaking proceedings in which RAPA has offered formal Comments.

Special Recognition

RAPA's Lew Craig received the attorney general's Special Recognition Award at the DOL, Civil Division's retreat for his contribution to the integration and development of the attorney general's public advocacy responsibility for regulated utility matters.

Transportation

DOT&PF prevails in trial of Gourmet Ventures

condemnation. DOT&PF condemned a strip of land near Wasilla for the expansion of the Parks Highway from a two-lane road to a freeway. Senior AAG Gary Gantz successfully represented DOT&PF's position in a hearing before a master to determine the value of the condemned property. The property owner appealed the master's determination for a trial *de novo* before a jury.

AAG Gantz again successfully represented DOT&PF's position in a nine-day trial. Many

thanks for invaluable assistance during trial go to AAG Susan Urig, paralegal Sherene Jensen, and law office assistants Beth Goodwin and Barb Peterson.

Foodmart condemnation settled. DOT&PF settled another Parks Highway condemnation, this one involving a convenience store and gas station. Chief AAG Jim Cantor represented DOT&PF.

DOT&PF exonerated in Farmer transfer investigation. The Nuclear Regulatory Commission investigated whether DOT&PF unlawfully discriminated against its former statewide radiation safety officer when DOT&PF transferred the officer to a different job. After investigation, the Nuclear Regulatory Commission determined that allegations of discrimination could not be substantiated. Senior AAG Gary Gantz represented DOT&PF.

CRIMINAL DIVISION

Anchorage DAO

Jury finds Dekietric Lewis guilty but mentally ill for threatening his mother and sister. On November 16, 2004, Dekietric Lewis, who had gotten out of jail only a few days earlier, threatened to kill his mother and sister while brandishing a butcher knife. Both reported to police that Lewis was mentally handicapped and had refused to take his medication.

He had gotten into an argument with his mother and sister and tried to force them physically into the bathroom. When he had difficulty, he went to the kitchen and got a butcher knife. He put it in his coat pocket, but could not get it back out except by cutting it out of his pocket, all the while threatening to kill his mother with it. When officers arrived he threatened to kill them, too.

When police arrested him, they took Lewis before a magistrate who, reading him his rights, told him he had the right to remain silent. However, he

did not have the ability to remain silent, and continued to ramble on about how he would be a father to the officers and treat them like his own daughter and about how he had beaten the grand jury before when it did not indict him.

In an unusual move, the prosecution requested that the judge instruct the jury on, and that the jury find Lewis, "guilty but mentally ill." The jury found Lewis guilty, but mentally ill.

ADA Adrienne Bachman tried the case for the state.

Nathaniel Vickers convicted of lighting his girlfriend on fire. On June 11, 2004, at about 8:00 AM, John Johnston saw a woman, her clothing on fire, running and screaming in the street in East Anchorage. He doused the flames with his coat. The woman, Annette Jamestown, was taken to the hospital with severe burns.

At the hospital, Annette Jamestown told police that she and her boyfriend, Nathaniel Vickers, had argued. He had been using cocaine. She wanted to leave their residence, but when she did, he followed in their truck. He caught up with her and told her to get in the truck. She did. When she did, Vickers poured rubbing alcohol on her, lit a match, and threw it at her, starting her clothing afire.

Police located Vickers in their apartment, with the apartment smelling of smoke and an empty bottle of rubbing alcohol on top of the garbage.

At trial, Annette Jamestown denied that Vickers had been the person who lit her afire, still hoping to continue their relationship. But she had told not only the police, but also several other people that he had been the one who did it. So the trial jury convicted Vickers of assault in the first degree despite Jamestown's trial testimony.

The grand jury had originally indicted Vickers not only for assault in the first degree, but also attempted murder in the first degree. Judge John Suddock directed a judgment of acquittal against

the prosecution on the charge of attempted murder in the first degree at the close of the prosecution case, dismissing the attempted murder charge, concluding that no reasonable person could infer that Vickers intended to kill her when he lit her on fire. ADA John Skidmore tried the case for the state.

Michael Johnson convicted of felony DUI despite switching places with passenger. On or about April 23, 2005, at about 2:00 AM, University of Alaska Anchorage police Officer Munn saw a small white car driving 50 mph in a 35 mph speed zone on Providence Drive. When the officer stopped the car, the car drove up onto a sidewalk. As the officer pulled up behind it, the officer saw the driver switch places with a female passenger. The driver, Michael Johnson, had a .173 blood alcohol. Luckily, the female passenger told police that Johnson had been driving, that Johnson told her to switch places with him, and that she did so.

A jury convicted Johnson of DUI and, in a second stage of the trial, convicted him of felony DUI based on his two prior DUI convictions. Johnson also has two prior felony convictions and faces a presumptive sentence of three to five years in jail. ADA Kat Runnels tried the case for the state.

After four years of waiting to try case, Anchorage DA convicts perennial unemployment fraud violator. During 1995 and 1996, Annette Moore had been hurt while working for Federal Express and been injured. She started receiving workers' compensation benefits. She also applied for unemployment benefits, falsely certifying that she was ready and able to work but could not find work.

Moore had had other periods during which she had gotten benefits and had made false statements to get those benefits, too. In those instances, the Department of Labor and Workforce Development had chosen to bring an administrative proceeding to recover the money and to disqualify her from future claims.

In 2002, Moore telephoned the Department of Labor and Workforce Development to inquire about the administrative proceeding. The clerk who got the call looked up her case in his computer and saw that there was a period of time that she had been receiving benefits different from the one that was the subject of the administrative action – the 1995–1996 period. The clerk reported that to unemployment fraud investigators.

The state filed a criminal action charging that 1995–1996 fraud in 2002, within the extended time provided by the statute of limitations when the victim of a fraud discovers the fraud. But the defense had put off the trial for three years before the court finally pressed the defense into a trial.

That first trial resulted in a hung jury. But in a second trial in March, 2006, four years after the case was filed, an Anchorage jury convicted Moore of 12 counts of false statement to obtain the unemployment benefits and theft in the second degree for stealing the money she was paid as unemployment benefits. ADA Dan Cheyette tried the case for the state.

Drunk driver driving on flat tires and metal rims convicted of felony DUI. At 9:21 PM on November 28, 2005, the Anchorage Police Department Dispatch Center received a report that a vehicle was driving erratically inbound on the Glenn Highway. The caller said that the vehicle had flattened tires and was driving on the rims. The caller then updated the situation, reporting that the vehicle had gone into the ditch and that the male driver and the female occupant had exited the vehicle and entered another vehicle which drove them to the gate at Fort Richardson. Anchorage police officers found Steven Yates and the female at the gate at Fort Richardson. Yates refused to submit to a breath test for blood alcohol.

The citizen testified about those events at the trial and the officers who dealt with him described Yates' mood swings during his contact with

police, dozing off and then waking up to become combative and profane.

Yates had two prior convictions needed to make the offense a felony and an Anchorage jury convicted him of felony DUI. Yates had a prior felony conviction, too, so he faces a presumptive sentence for felony DUI. ADA Kat Runnels tried the case for the state.

Anchorage District Attorney's Office files charges against Patrick Flores-Muller in the first case of on-line enticement of minor for sex. On March 23, 2006, an Anchorage police detective, posing as a fourteen-year-old girl, went on-line in an Internet chat room. Within the first few minutes of the Internet communication, a person describing himself as a 20-year-old airman stationed at Elmendorf Air Force Base had responded. After the detective described himself as the fourteen-year-old girl, the person asked the "teen" if she had ever "gone down on a guy" and said he could coach her.

After an hour of chatting, the man invited her out. When the "teen" asked what they would do, the man replied "Maybe a movie, and then come back to my place, we can do oral on each other, and we can go into fucking and then try anal." The conversation continued with his asking the "teen" if she had been with a girl before. He said wanted to have a threesome "badly." He wanted her to bring a friend into the event.

A second detective posed as a friend of the first fourteen-year-old and joined the exchange. All three then communicated in a private Internet exchange. The man wrote, "She's 14 too? Cool."

Three days later, on March 26, 2006, the man initiated another exchange with the first "teen." He gave her his phone number in case she wanted to call him. The detective confirmed that the number given was registered to the Patrick Flores-Muller on Elmendorf Air Force Base.

On March 28, 2006, Flores-Muller arranged to meet both "teens" at an Anchorage movie theater at 9:00 PM and asked them if they wanted to do what they'd talked about a few nights earlier. He said he'd be in a blue car. At 9:10 PM, Anchorage police saw a blue car driving to the designated location for the meeting. APD stopped the car and confirmed that the driver was the defendant, Patrick Flores-Muller.

Flores-Muller admitted to APD detectives that he had gone to the theater to meet two 14-year-old girls for the purpose of having sex with them. He said that he brought baby oil, "fruity lube," and condoms to use with the girls.

Fairbanks DAO

ADA Jason Gazewood finally concluded a robbery case involving Sean Judd after over a year of delays and numerous court hearings. The delays resulted from Judd's numerous attempts to represent himself and then to fire his appointed counsel. He finally managed to have his conflict counsel removed from the case after he assaulted her in court. New counsel with whom Judd was apparently happy resolved the case short of trial.

ADAs Darren Watts and Matt Christian, in the misdemeanor unit, had similar experiences during March. Matt conducted an intense cross examination of a defendant during an evidentiary hearing. He learned the next day that after his vigorous cross examination, the defendant went from the court room to the hospital complaining of chest pain. In a separate case, a defendant avoided trial with Darren by going to the hospital complaining of chest pains before the trial even began.

The month of March brought 87 new misdemeanor DUI's to the office and 14 felony DUI's. The 87 misdemeanor DUI's comprised nearly a quarter of the misdemeanor work load for the month. The misdemeanor unit received 331 new referrals for the month.

The case that caused the most concern in the office involved a sexual assault that occurred in the Northward Building, which houses the Fairbanks Office. The attack occurred in one of the stairwells early on a Sunday morning. Police were able to locate the assailant several blocks away in a bar. He caught the attention of the bar tender when he came into the bar wearing unique headwear, at least unique for Fairbanks in early March. His headwear turned out to be his victim's underwear.

Juneau DAO

There were no felony jury trials in the Juneau DAO during the month of March. A major indictment was obtained in what is believed to be Juneau's most serious arson case, the burning of the historic Holy Trinity Episcopal Church and Rectory, only two blocks from the court building and the capital building. The fire occurred on March 12, 2006, in clear, cold and windy weather. The church and rectory were entirely destroyed in a blaze that threatened nearby homes and a hotel. On March 30, the grand jury indicted Robert Hubier for the arson based on evidence generated during a relentless investigation by the fire marshal with the assistance of ADAs Jack Schmidt and Doug Gardner.

Kenai DAO

The grand jury has been busy this month with over 30 indictments, including nine drug cases, seven felony DUIs, and a manslaughter case. Among the highlights were two burglaries in which the defendant smashed in the window of both businesses with his hand and bled all over the counters and the cash registers. A CODIS hit revealed that he was already in the system for other burglaries.

Another case arose when a lady went to court on a civil matter and as she was walking through the courthouse parking lot, her eight-year-old companion pointed out a person in a car who he

thought was doing drugs. The lady went around the corner to the police department and reported it. Two suspects were contacted in the vehicle, one of whom had been inhaling his drugs. They were both arrested for assorted misconduct involving a controlled substance in the fourth degree. Other drug cases involved multiple-pound marijuana grows and a meth lab.

The grand jury also indicted a defendant on a manslaughter/DUI charge for crashing his four-wheeler into the river while intoxicated, which resulted in his passenger being injured and drowning. He failed to rescue her from the river, and by the time the EMTs arrived, it was too late to save her. Despite telling everyone at the scene that he had been driving, when he realized his situation, his story changed and he decided to try to implicate his passenger as the driver. In phone calls from jail he can be heard telling people that they have to come to court and lie for him. The grand jury also charged him with witness tampering.

In a two-week trial, ADA Scot Leaders secured convictions for multiple counts of sexual abuse of a minor in the first degree and second degree on two victims as well as for charges of enticement and child pornography. The defendant had managed to drag this case out for four years since the time of the crimes, which certainly took its toll on the victims and their families. The only up side to the delay was that he was kept in jail the entire time. The real irony is that Leaders had indicted this case during his first stint in Kenai and it waited for his return the second time around so he got to do the trial as well.

Kodiak DAO

A 55-year-old Port Lions man with no prior criminal history was convicted of sexual abuse of a minor in the third degree for fondling his step daughter while she slept. He was sentenced to 60 months in jail with 42 months suspended and placed on probation for five years. Among his many probation requirements are that he submit to

a sexual offender evaluation and complete any treatment as will be required, and that he register as a sexual offender for at least the next 21 years. He is also restricted from being around minors unsupervised.

A 34-year-old Kodiak man was sentenced to four years with two years suspended, and placed on probation for five years, following his plea to misconduct involving a controlled substance in the fourth degree. Charges of tampering with evidence were dismissed. This defendant will also face deportation proceedings upon his release from jail.

A 25-year-old Kodiak man was sentenced to 60 months with 30 months suspended following his conviction for assault in the second degree. This defendant made up a story about the victim assaulting his sister, then enlisted the assistance of another man to help him find and attack the victim with two softball-sized pieces of concrete. Fortunately the victim did not suffer any permanent physical injuries.

The case that really drew all the attention in Kodiak this month involved the Kodiak Police Department seizing 27 fighting roosters and the subsequent indictment of a 49-year-old Kodiak man for promoting an exhibition of fighting animals, a class C felony. A trial date has yet to be set.

[Nome DAO](#)

A number of felonies are keeping the Nome DAO busy, and *State of Alaska v. Celia Harrison* is a good example. Last November, during the day shift at the Norton Sound Regional Hospital, a large volume of narcotics was discovered missing from the medicine locker at the nurse's station. Three nurses were on duty, and by policy all were asked to provide a urine sample. Suspicion settled on the one nurse, Celia Harrison, who—try as she might—could not fulfill this condition of her employment.

Harrison denied stealing anything. However, police found that the lining of her thick winter coat had been cut open and stuffed with hard drugs—including various dosages of Demerol and Morphine injectables, Oxycodone tablets, an empty syringe and extra ones for later, even a drug to amplify the effects of the narcotics. Asked by an officer how the drugs got into her coat, Harrison retorted that it was “obvious.”

The hospital compliance officer of course found flaws in the accounting and control system for drugs at Norton Sound. She was able to document, however, missing inventory records over many months and narcotics inventory shortfalls well in excess of \$25,000.

Harrison has been charged by indictment with numerous felonies involving drugs, theft and the falsification of business records. Now she does not really deny stealing the drugs, but hopes to avoid accountability for her misconduct by telling anyone who will listen that she suffers from Asperger's Syndrome—a rare form of autism. In Harrison's view, her condition left her vulnerable to abuse by the hospital administration, which over time unavoidably drove her to drugs. A jury will sort this out later this spring.

Former DA John Vacek was recently in Nome for several weeks. He will likely be taking a position with the Sacramento District Attorney's Office. John now lives in Davis, California, with his new bride Lisa.

[Palmer DAO](#)

Drug prosecutor Curtis Martin did three jury trials in March. In the first trial, Andrew Moffitt was convicted as-charged of misconduct involving a controlled substance in the fourth degree, providing false information and violating conditions of release. Defendant took the stand during the trial, which did not work in his favor.

In his second trial and in a different case, Andrew Moffitt was convicted as-charged of misconduct involving a controlled substance in the

fourth degree, driving while license suspended and providing false information. Moffitt declined to take the stand in his second trial.

Another drug offender, Daniel Hoekzema, was convicted as-charged after his jury trial of misconduct involving a controlled substance in the fourth degree and tampering with physical evidence. The jury in Hoekzema's trial returned the verdicts after deliberating less than a half hour.

Another jury trial resulted in Allen G. Lau being convicted of felony DUI, felony refusal, driving while license suspended and misconduct involving a controlled substance in the sixth degree. ADA Suzanne Powell was the trial prosecutor in this case.

Sarah Dawn MacCallum was convicted after a jury trial of misdemeanor DUI. MacCallum's Datamaster test result was .106, and she decided to take her chances with a jury. This case was handled by ADA Michael Perry.

On March 23, 2006, the jury trial in the case of *State v. Kevin Stock* commenced. Stock was charged with assault in the first degree, assault in the second degree and assault in the third Degree. The victim died (not as a result of the assault) before the trial started. The defendant is claiming self-defense. ADA Suzanne Powell is handling this case.

On March 24, 2006, Richard Deremer, III was sentenced to serve 134 years. Last November, a Palmer jury found Deremer guilty of murder in the first degree, murder in the second degree, burglary in the first degree, arson in the first degree and tampering with evidence. Deremer and his wife planned the murder of the victim, David McKinney, to get his prescription medications. Deremer kicked in the door and shot the victim in the head with a shotgun. The two cut open the victim's safe, took the drugs from the safe and set fire to the victim's home.

In a recorded conversation with his cousin after the murder, Deremer described how he and his wife communicated with hand-held radios during the incident and the adrenaline rush he got when he shot the victim. Deremer's wife, Cynthia Estes, was convicted of murder in the first degree in February and will be sentenced on May 5. ADA Suzanne Powell was the trial prosecutor in this case.

Timothy Weys was sentenced to serve 99 years, with 24 years suspended, for first-degree murder of his mother. On July 4, 2005, Weys started a fire in the basement of the family home and barricaded the stairwell, thereby preventing his mother's escape. The sentencing was very emotional, with many family members in attendance. ADA Richard Payne prosecuted this case.

Eugene Gordon was sentenced to serve 75 years for the December 12, 2004, murder of Jesus "Jesse" Manglona and the attempted murder of Laurie Welsh. Gordon, after a night of drinking, broke into Manglona's home, found Manglona in bed with Laurie Welsh, Gordon's ex-girlfriend, shot Manglona in the face while Manglona was sleeping and tried to shoot Welsh.

At the sentencing, Gordon apologized to Manglona's family and maintained that he had not meant to kill Jesse. Gordon's dissatisfaction with the outcome of his trial was obvious when, at sentencing, he turned to the prosecutor and said: "Sir, I am amazed that there are people like you out there." Laurie Welsh and Jesse Manglona's family members, on the other hand, were very appreciative of the prosecution's (DA Roman Kalytiak and ADA Michael Perry) efforts.

On March 9, 2006, Glen W. Ogletree was sentenced to a term of 18 years to serve, with additional suspended time and 10 years probation on charges of sexual abuse of a minor in the first degree, exploitation of a minor, burglary, violating a domestic violence protective order, distribution of child pornography and possession of child pornography. During the sentencing, Judge

Eric Smith stated that this was the most time to serve he has ever handed down in a sexual abuse case. Ogletree abused the victim from age nine to age fifteen, took nude photographs of her and possessed many photographs and videos of child pornography. The case was prosecuted by DA Roman Kalytiak and ADA Michael Perry.

John Smith was sentenced to serve 16 years on March 10, 2006, after his pleas to charges of robbery in the first degree, burglary in the first degree, misconduct involving weapons in the third degree, vehicle theft in the first degree, assault in the third degree and reckless driving. Smith, who is now 19 years old, burglarized numerous homes. The robbery conviction stems from a burglary where Smith held the victim at gunpoint, tied him up with phone chord and placed a pillow over his head. Smith also received some notoriety when, prior to sentencing, he left his third party custodian, cut off two ankle monitors and remained at large for a week after being released to attend his father's funeral. ADA Richard Payne prosecuted the case.

The sentences given to Deremer, Weys, Gordon, Ogletree and Smith add up to 318 years to serve.

On March 21, 2006, Gordon Carvalho pled no contest to charges of robbery in the first degree, misconduct involving weapons in the third degree, felony eluding, assault in the third degree on a police officer and vehicle theft in the first degree. Carvalho also admitted a petition to revoke felony probation. Carvalho went on a crime spree on May 5 and 6 of 2005 and was shot in the face by an Alaska State Trooper during one of the criminal episodes. As part of the plea agreement, Carvalho agreed to serve at least 16 years and two months, but not more than 21 years and two months. The case was prosecuted by DA Roman Kalytiak.

Timothy Jean pled to one count of sexual abuse of a minor in the first degree and one count of possession of child pornography. As part of the

agreement, the defendant will serve at least 10 years in prison. Jean sexually abused his stepdaughter for a period of five years. ADA Richard Payne was the prosecutor in this case.

Edward Huntington was indicted on charges of sexual assault in the first degree, sexual abuse of a minor in the first degree and incest. Huntington is alleged to have raped his twenty-year-old daughter who sought out her father she had never met. The investigation resulted in further allegations of sexual assault by the defendant's other daughter. The prosecution was handled by ADA Richard Payne.

On March 8, 2006, the state obtained a four count indictment against Frostine Monegan-Hamilton. The indictment charges her with three counts of assault in the first degree and one count of assault in the second degree. The allegations are that Hamilton severely burned her four-year-old stepson by holding him down in a tub of scalding water. The child victim is in intensive care at the Harborview Burn Center in Seattle, Washington and his injuries remain life-threatening. ADA Richard Allen is prosecuting this case.

ADMINISTRATIVE SERVICES

DIVISION

Budget and information technology loom largest on the landscape of administrative duties.

The division continues to travel down the ProLaw path, having met with the ProLaw representative in March and now awaiting a proposed implementation plan from ProLaw. At the same time a continued watch is being kept on the Microsoft conversion, in particular as to how it will affect the ProLaw implementation and whether there are some aspects of migrating to Microsoft that would be best done now, rather than redone later. Migrating e-mail to MS Exchange is an

aspect of the changes being looked at for later this year.

The division is looking at purchasing some software licensing to streamline large copy jobs needed for discovery in certain cases. The software will allow the scanning of documents that will be stored in electronic format on the department's network.

SAVE THE DATE

August 6-10 Conference of Western Attorneys
General Summer Meeting -
Anchorage